

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES BARLOW,

Plaintiff,

No. CIV S-03-0872 LKK PAN P

vs.

MARK TERRELL, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner without counsel seeking relief pursuant to 42 U.S.C. § 1983. He alleges he was convicted of a crime because defendant Solano County Public Defender's conflict office hired incompetent counsel to represent him. On March 1, 2006, the court directed plaintiff to explain in writing whether he was convicted in the criminal proceedings at issue in this action and if so, whether the conviction has been "reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff has responded.

Plaintiff was convicted in the criminal proceedings at issue on August 15, 2003, and plaintiff's appeal is pending.

Plaintiff has not demonstrated that his claim is cognizable.

1 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for
2 failure to state a cognizable claim.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
5 after being served with these findings and recommendations, plaintiff may file written objections.
6 The document should be captioned "Objections to Magistrate Judge's Findings and
7 Recommendations." Plaintiff is advised that failure to file objections within the specified time
8 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
9 Cir. 1991).

10 DATED: March 30, 2006.

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13 UNITED STATES MAGISTRATE JUDGE

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